IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5493 of 2005
With
SPECIAL CIVIL APPLICATION No. 20464 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PATEL MANGALBHAI SHANKARBHAI - Petitioner(s)
Versus
DEPUTY DIRECTOR AGRICULTURAL MARKETING AND RURAL FINANCE & 5 - Respondent(s)

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Appearance :
MR PRAKASH K JANI for Petitioner(s) : 1,
MS DS PANDIT AGP for Respondent(s) : 1,
MR BS PATEL for Respondent(s) : 2,
MRS RANJAN B PATEL for Respondent(s) : 2,
MR RJ GOSWAMI for Respondent(s) : 3,
MR SHIRISH JOSHI for Respondent(s) : 4,
MR DR BHATT for Respondent(s) : 5,
MR SURESH M SHAH for Respondent(s) : 6,
MR JJ YAJNIK for Respondent(s) : 6,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 02/03/2006
COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

Special Civil Application No.5493 of 2005 is filed by a member of Agricultural Produce Market Committee (APMC) Patan challenging the election of respondent No.2-Dahyabhai Patel as Chairman of the APMC Patan on 22.3.2005, the proceedings of which election are produced at Annexure-N to the petition.

Special Civil Application No.20464 of 2005 is filed for directing the competent authority to hold elections for the office of Vice Chairman of the APMC Patan.

2. In view of the order that the Court proposes to pass, it is not necessary to set out the facts in detail. Suffice it to state that the declaration of result of the so-called election held on 22.3.2005 has been stayed by this Court by order dated 29.3.2005 in view of the extraordinary circumstances under which the elections came to be held. The elections were scheduled to be held on 22.3.2005. Just on the previous day, respondent No.3 in SCA No.5493 of 2005 (hereinafter the reference will be to the parties in SCA No.5493 of 2005) filed a civil suit in the Civil Court at Patan challenging the

scheduled elections and the Court issued notice on the interim injunction application praying for stay of elections. On receiving the notice, respondent No.1-Election Officer postponed the elections. As if this was not enough, thereafter respondent No.4 filed a civil suit in the Civil Court at Mehsana on 22.3.2005 and prayed for a direction that the elections be held. The learned Civil Judge, Mehsana, even though not having jurisdiction to entertain the suit, not only issued notice on the said application but also gave a direction that the elections be held as scheduled and that as per the settled legal position, the election process could not be delayed. However, this order of the Civil Court at Mehsana was served upon respondent No.4 late in the evening of 22.3.2005, by which time some of the members had already left the venue of election because they were already informed that the elections were postponed. However, upon receiving the order of the Civil Court at Mehsana, respondent No.1 conducted the elections and respondent No.2- Dahyabhai Patel was declared as having been elected as Chairman of APMC Patan. Hence Special Civil Application No.5493 of 2005.

3. At the hearing of these petitions, Mr BS Patel, learned counsel for respondent No.2 submits that respondent No.2 is agreeable to have his election to the office of Chairman of APMC Patan set aside with his consent and, therefore, respondent No.2 does not invite any findings of this Court.

4. Although looking to the manner in which the Civil Courts at Patan and Mehsana had passed the orders, this Court would have liked to go into the detailed examination of the controversy raised in the petition, in the facts and circumstances of the case and particularly in view of the fact that the Vice Chairman of APMC Patan has unfortunately passed away on 25.2.2006 (as stated by the learned counsel for the petitioner as well as respondent No.2) and consequently in view of absence of both Chairman and Vice Chairman of APMC Patan administration of the APMC is bound to suffer. Hence the learned counsel for the parties have requested the Court to take up the petitions for immediate hearing so that appropriate directions can be given to the competent authority for holding elections to the office of the Chairman as well as to the office of Vice Chairman of APMC Patan at the earliest possible time to reduce the period of vacuum in these important public offices.

5. In the result -

(a) with the consent of respondent No.2, we set aside the election of respondent No.2 Dahyabhai Patel to the office of Chairman of APMC Patan purported to have been held on 22.3.2005 and results declared on the same day as per Annexure-N to the petition. The proceedings at Annexure-N are, therefore, quashed and set aside as illegal and null and void ab-initio.

(b) the Director of Agricultural Marketing and Rural Finance, Gujarat State shall take all the necessary steps for ensuring that elections to the offices of Chairman and Vice Chairman of APMC Patan are held and concluded in accordance with the relevant statutory provisions and as expeditiously as possible. If the elections can accordingly be held in accordance with the relevant statutory provisions within a period of 15 days, the Director shall take the necessary steps to hold the elections within 15 days from the date of receipt of the writ of this Court.

6. As far as the orders passed by the Civil Courts at Patan and Mehsana are concerned, the notices issued on stay applications are quashed and in suo motu exercise of the powers under Article 227 of the Constitution, the stay applications are dismissed. However, this Court may not be treated to have closed the proceedings as regards examination of the propriety and bonafides of the orders passed by the two Civil Courts, and if necessary, appropriate decision will be taken on the administrative side.

7. Mr Jani for the petitioner submits that costs may be awarded as the petition was required to be filed on account of the unwarranted litigation filed by respondent Nos.3 and 4 which were presumably done in order to benefit respondent No.2.

8. In the facts and circumstances of the case,

it is not possible to give any finding, at this stage, whether respondent No.2 was directly involved in civil litigations. However, the fact remains that the litigations filed by respondent Nos.3 and 4 were unwarranted. Hence, respondent Nos.3 and 4 shall each pay a sum of Rs.5000/- (Rupees five thousand) to the petitioner within ten days from today. If respondent Nos.3 and 4 do not pay such cost to the petitioner by demand drafts payable in favour of the petitioner, respondent Nos.3 and 4 shall not be permitted to participate in the elections of Chairman and Vice Chairman of APMC. Once the costs as directed are paid by respondent Nos.3 and 4, this direction for costs shall not be treated casting any further adverse consequences on them.

9. Both the petitions are accordingly disposed of in terms of the directions contained in paras 5 and 8 hereinabove. This order shall not amount to giving a clean chit to the Civil Judge (SD) at Patan or to Civil Judge (SD) at Mehsana and this Court will consider the matter on the administrative side.

Rule is discharged in SCA No.5493 of 2005 and notice is discharged in SCA 20464 of 2005.

Direct service is permitted.

(M.S. SHAH, J.)

(SHARAD D DAVE, J.)

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